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No. 07-700

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

RICOH ELECTRONICS, INC.,

Petitioner,

v.

JAMES HALUCK and MICHAEL LITTON,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of California Fourth Appellate District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1-3. Whether the California Court of Appeal erred in concluding that Ricoh Electronics, Inc. (a California corporation, which is a wholly-owned subsidiary of a New Jersey corporation, which is a wholly-owned subsidiary of a Japanese corporation) failed to establish at Motion for Summary Judgment that it was a closely related third party to the Japanese corporation so as to assert the rights of the Japanese corporation under Article VIII(1) of the U.S. Japan Friendship, Commerce, and Navigation Treaty.

4. Whether a California corporation, which is a wholly-owned subsidiary of a New Jersey corporation, which is a wholly-owned subsidiary of a Japanese corporation, has third-party standing to the Japanese corporation so as to assert the rights of the Japanese corporation under Article VIII(1) of the U.S. Japan Friendship, Commerce, and Navigation Treaty.

LIST OF PARTIES

Ricoh Electronics, Inc., a California corporation;

Larry Vaughn, a resident of the State of Georgia;

Houssam El Jurdi, a citizen of the United States;

Yoshihiro Nomura, a citizen of Japan;

Haruo Uesaka, a resident of the State of Georgia;

Yoji Ide, a citizen of Japan;

Yasuaki Muramatsu, a citizen of Japan;

Michael A. Litton, an individual residing in California; and

James Haluck, an individual residing in Nevada.

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OPINIONS BELOW

The August 29, 2007 opinion/decision of the Supreme Court of California, which is not reported, denying review of the Petition for Review filed by Petitioner REI is printed in Petitioner's Petition for Writ of Certiorari, Appendix, page 49 (hereinafter "Petitioner's App.").

The June 1, 2007 opinion of the California Court of Appeal, Fourth Appellate District, Division 3 on Petitioner's cross-appeal, affirming the decision of the trial court, is reported at *Haluck v. Ricoh Electronics, Inc.*, 151 Cal.App.4th 994, 1010 (2007) and is reprinted at Petitioner's App., pages 1-25.

The May 23, 2005 Order of the Supreme Court of the United States, denying Petitioner's February 24, 2005 Petition for Writ of Certiorari, docket number 04-1162.

The November 8, 2004 Order of the Superior (trial) Court of the State of California, denying Petitioner's motions for summary judgment, or in the alternative, motions for summary adjudication invoking the Article VIII(1) defense of the U.S. Japan Friendship, Commerce, and Navigation Treaty, is not reported and is printed at Petitioner's App., pages 28-48.

JURISDICTION

This Court does not have jurisdiction to hear this case because the state grounds for the decision are both independent and adequate to support the judgment. *Klinger v. Missouri*, 13 Wall. 257, 263 (1871); *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); see also *Berea Coll. v. Kentucky*, 211 U.S. 45, 53 (1908).

The California Court of Appeal made a finding that in this specific instance, the twice-removed California subsidiary failed to establish third-party standing sufficient to assert the rights of the Japanese corporation. This finding was based upon principles of third-party standing and piercing the corporate veil. In determining whether third-party standing existed, the California Court of Appeal did not rely upon Article VIII(1) of the U.S. Japan Friendship, Commerce, and Navigation Treaty.

STATUTES OR OTHER PROVISIONS INVOLVED

Title 28, United States Code section 1257 provides in pertinent part:

> *(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the*

> *validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.*

California Constitution, Article XX, section 5 states, in pertinent part:

> *All laws now in force in this State concerning corporations and all laws that may be hereafter passed pursuant to this section may be altered from time to time or repealed.*

STATEMENT OF THE CASE

A. Respondents bring employment claims against Petitioner REI, an American corporation twice removed from Ricoh Japan.

Respondents James Haluck and Michael Litton (hereinafter "Respondents") were employees of Ricoh Electronics, Inc., a California corporation (hereinafter "REI"). REI is an American corporation, incorporated under the laws of California, enjoying all the benefits of any other California corporation. REI is wholly owned by Ricoh Americas Corporation, Inc., a New Jersey corporation (hereinafter "Ricoh New Jersey"). Ricoh New Jersey is also an American corporation, incorporated under the laws of New Jersey, enjoying all the benefits of any other New Jersey corporation.

Ricoh New Jersey is wholly owned by the Japanese corporation Ricoh Company, Ltd. (hereinafter "Ricoh Japan").

Respondents Haluck and Litton filed suit against REI and certain individuals. The following causes of action survived Petitioner's Motion for Summary Judgment: race and national origin discrimination, retaliation for complaining of race and national origin discrimination, failure to prevent discrimination and retaliation, adverse employment actions in violation of public policy, and intentional infliction of emotional distress. Respondent Litton's claims of negligent infliction of emotional distress also survived as to certain individuals.

B. This case was tried, appealed, and remanded for retrial because of judicial misconduct.

At trial, Petitioner was awarded a defense judgment. Respondents appealed the judgment on the basis of judicial misconduct. Petitioner cross-appealed the trial court's ruling on Petitioner's Motion for Summary Judgment that Petitioners could not invoke the Article VIII(1) of the U.S. Japan Friendship, Commerce, and Navigation Treaty (hereinafter "U.S. Japan FCN Treaty"). On this appeal and cross-appeal, the California Court of Appeal found that the judicial misconduct was so severe as to taint the jury's perception of the evidence, and ordered that the judgment be reversed and the case be remanded for

retrial by a new judge. The California Court of Appeal also found Petitioner had failed to establish third-party standing to assert the rights under the U.S. Japan FCN Treaty. Therefore, because this case is to be retried, there has not yet been a final finding of fact.

C. Petitioner REI did not rely on Ricoh Japan to supply personnel with highly specialized technical skills, and the employment decisions which give rise to Respondents' claims were not made by Ricoh Japan.

Respondents Haluck and Litton both worked at the Thermal Paper Division ("TMG") of REI's Santa Ana facility. REI's TMG facility was built in 1985 to manufacture thermal paper. At that time, the technology for the coating paper process used to manufacture thermal paper was already well established in the United States. Coating paper technology is not new, nor are the dispersion and mixing processes for the liquid coatings for the paper used in the TMG facilities. The coating process technology used at REI's TMG facilities, including Santa Ana, has remained unchanged since Haluck has been there. REI's own website admits that, since entering the thermal paper market in 1977, it has continued to rely on the same technology for thermal sensitized paper developed over fifty years ago. [Separate Statement and Declaration attached thereto of James Haluck in Opposition to Petitioner's Motion for

Summary Judgment (hereinafter "Haluck's Evidence"), Fact No. 4.].

Since Haluck's arrival in 1989, the equipment used in REI's TMG facility in Santa Ana has consisted of coaters, slitters, mixing operation, dyers, conveying systems, wrapping equipment and loaders. All have either been purchased from and/or built by U.S. or U.K. companies. [Haluck's Evidence, Fact No. 5].

The E-3 coater, the primary machine used to manufacture thermal paper, was designed for REI by the Black Clawson Company, a U.S. company. REI decided to have that coater built in Japan to save costs. The No. 1 and No. 2 coaters were purchased used from U.S. companies. Two of the three slitters were manufactured by Dusenberry, located in the U.S. and England. The third slitter was manufactured by Cameron, a U.S. company. The mixing operation was designed and built by a U.S. contractor. The E-3 Dyers were built by Tec Systems, another U.S. company. To Haluck's knowledge, except for the E-3 coating machine, none of the machines in the TMG facility are from Ricoh Japan, nor have any been modified with technology from Ricoh Japan. The E-3 coating machine was installed in 1985, nearly 25 years ago. [Haluck's Evidence, Fact No. 6].

Contrary to representations presented in the Declaration of Nomura filed in support of Petitioner's Motion for Summary Judgment, par. 4, no cutting edge equipment or technology has been introduced

into REI's Santa Ana TMG facility by Ricoh Japan since Haluck had been working there. The TMG facility manufactures paper, not equipment. Also, for the most part, the imaging technology (e.g. photocopiers), thermal media and toner products in REI's TMG facilities are not new concepts. Any reference to "cutting edge equipment" in REI's Santa Ana facilities pertains only to the Office Machine Group ("OMG") Division, located in Tustin, California. The OMG Division is where REI manufactures plain paper copiers and would have any possible need for "cutting edge equipment." [Haluck's Evidence, Fact No. 7].

REI's California (hereinafter "local") Divisions, including the TMG Santa Ana facility, have their own Research and Development ("R & D") departments. These R & D Departments are separate and apart from those in Ricoh Japan. The TMG facility's R & D Department tailors its thermal paper formulations to address the U.S. markets. TMG's R & D Departments also evaluate the paper coatings used in TMG's local facilities. Ricoh Japan employees would not be involved in that evaluation process. [Haluck's Evidence, Fact No. 8].

All REI's local TMG Division staff, including Haluck and Litton, and those in the Santa Ana TMG facility, are very familiar with compliance with REI's quality assurance standards and are more than capable of ensuring those standards are met. The local TMG staff and Haluck are also knowledgeable regarding the procedures and specifications of REI's

ISO 9000 Quality Management System ("ISO 9000"), REI's quality assurance compliance system. ISO 9000 requires REI's local TMG staff to have qualifications and training on that system. ISO 9000 was revised in 2000. All local staff who were certified for ISO 9000 underwent re-certification for revised ISO 9000. [Haluck's Evidence, Fact No. 9].

Ricoh Japan employees are not as familiar as the local TMG staff with REI's ISO 9000 quality assurance system. In fact, Harry Tsutsumi, an expatriate who was brought from Ricoh Japan to temporarily oversee the RSG Group's Quality Assurance Department (Nomura Declaration in support of Petitioner's Motion for Summary Judgment, par. 10), did not understand the ISO 14000 Quality Management System ("ISO 14000"), an environmental quality management system. [Separate Statement and Declaration attached thereto of Michael Litton in Opposition to Petitioner's Motion for Summary Judgment (hereinafter "Litton's Evidence"), Fact No. 9].

Tsutsumi left the ISO 14000 project at its inception. Litton was not only on the ISO 14000 Steering Committee which led to REI's ISO 14000 registration, but Litton also authored the ISO 14000 Quality manual and wrote the ISO 14000 policy located inside the manual. That manual was also used as a framework for establishing the ISO 14000 management system in REI's Georgia and Mexico facilities. Litton received recognition for his efforts with a year end award. There is no need for Ricoh Japan employees to

oversee quality assurance in REI's local facilities, including the TMG Santa Ana facility. [Litton's Evidence, Fact No. 10].

REI has well established documented programs and procedures in place, pursuant to both ISO 9000 and ISO 14000 standards, which were developed and written locally by REI's U.S. staff. Once a product enters production, all quality assurance parameters are set. From that point on, REI's own Quality Assurance Department ensures continual adherence to the parameters. Once a product enters production, all quality assurance parameters are set. There is no need for Ricoh Japan employees to oversee quality assurance in REI's local facilities, including the TMG Santa Ana facility. [Haluck's Evidence, Fact No. 11].

Contrary to representations made in Declaration of Nomura, par. 6, Respondents are unaware of any methodology or process within REI in the past or currently being used to determine whether any local staff are qualified to fill a particular need within REI prior to deciding to transfer an expatriate employee from Ricoh Japan to REI to fill that need. Respondents are also unaware of any involvement or input by REI's Human Resources Department in the evaluation of local staff qualifications for local needs filled by Ricoh Japan employees. There is also no posting of local REI positions filled by Ricoh Japan employees. [Haluck's Evidence, Fact No. 12].

REI's local staff possess the advanced level of expertise and proprietary knowledge of REI's process

procedures, techniques, business and internal operations for the U.S. markets. The formulations for the paper coatings at REI's TMG facility are not proprietary to Ricoh Japan alone. All new products (reformulations) have to be turned over by REI's local R & D (with ISO turnover documentation) to REI production. There is no need for Ricoh Japan employees to oversee the process procedures, techniques, business and/or internal operations in REI's local facilities, including the TMG Santa Ana facility. [Haluck's Evidence, Fact No. 13].

The technical specifications for production and manufacture are perfected at REI by staff at both the California and Georgia facilities for production of machinery and equipment. The majority of that machinery and equipment is manufactured in the U.S. and Sweden. Contrary to the representations made in the Declaration of Nomura filed in support of Petitioner's Motion for Summary Judgment, par. 12, Shigeichi Yasukawa never served as a liaison between REI's Orange County Products Production Operations Department and related Production Departments at Ricoh Japan. Also, contrary to the Declaration of Nomura, par. 12, Respondents are unaware of any department in Ricoh Japan called "Products Production Operations Department." There is no need for Ricoh Japan employees to oversee the technical specifications for production and manufacture in REI's local facilities, including the TMG Santa Ana facility. [Haluck's Evidence, Fact No. 14].

REI's business is primarily dependent on its U.S. staff in California and Georgia for its operations in the U.S. REI's California facilities must also maintain compliance with regulatory bodies in California. Ricoh Japan employees are not as knowledgeable as local REI staff with regard to awareness of and dealing with local compliance issues.

Until 2000, when Haluck and Litton began complaining to management about race and national origin-based discrimination, Haluck was regularly invited to and attended high level management meetings with Houssam El Jurdi, Steve Windisch, Terry Wilcox, Defendants Nomura and Ide and other VP management level members. Suddenly, Haluck began to be excluded from those meetings. Haluck was never given any reason for his sudden exclusion from those meetings. [Haluck's Evidence, Fact No. 19; Litton's Evidence, Fact No. 28].

During a meeting with Defendant Nomura in his office in approximately March 2000, Litton asked Nomura if there were certain jobs that were off limits to Caucasian employees. Nomura then asked Litton if Litton knew what a "WASP" was. Litton did not, so he said "no." Nomura then proceeded to explain to Litton that the term "WASP" meant a "White Anglo Saxon Protestant" and added "they have to be carefully managed." Litton was very shocked and offended by that remark. Nomura began giving Litton examples of what he meant. Nomura started telling Litton about a Caucasian REI Vice President at that time, Larry Stewart (who was laid off the same day Litton

was), whom Nomura claimed would not listen. Litton knew Mr. Stewart and felt uncomfortable with Nomura's racist remarks and his criticisms of other people Litton knew, so Litton told Nomura to stop, and Litton left Nomura's office. [Litton's Evidence, Fact No. 26].

Beginning in or about January 2000, Litton began complaining to others in REI Management about the acts of racial discrimination occurring at REI. These acts included Litton's repeated inability to attain advancement to higher level positions, despite his qualifications and expressed interest to his supervisors and other management personnel. [Litton's Evidence, Fact No. 27]. These facts and others ultimately led to the filing of this lawsuit against REI and certain individuals for the previously referenced claims.

REASONS FOR DENYING THE PETITION

A. This Court lacks jurisdiction to hear this case.

This Court does not have jurisdiction to hear this case because the state grounds for the decision are both independent and adequate to support the judgment. *Klinger v. Missouri*, 13 Wall. 257, 263 (1871); *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); see also *Berea Coll. v. Kentucky*, 211 U.S. 45, 53 (1908).

Petitioner brought a cross-appeal with the California Court of Appeal, arguing that the trial court erred in its ruling on Petitioner's Motion for Summary Judgment that Petitioners could not invoke the Article VIII(1) of the U.S. Japan FCN Treaty. On this issue, the California Court of Appeal found Petitioner had failed to establish third-party standing to assert rights under the U.S. Japan FCN Treaty.

In reaching its determination, the Court of Appeal analyzed whether Petitioner had established that it had third-party standing sufficient to assert the rights of the twice-removed Ricoh Japan. This analysis did not rely upon the U.S. Japan FCN Treaty, but instead, on the California case authority of *Kirmse v. Hotel Nikko of San Francisco*, 51 Cal.App.4th 311, 321 (1996). Kirmse states, in pertinent part:

> *There are, of course, certain well-established grounds in many areas of law for piercing the corporate veil of a corporate subsidiary or for raising the rights of a closely related third party.* [citations omitted]. *By drawing such analogous bodies of law, a domestic subsidiary of a Japanese company may well be able to fashion, under appropriate circumstances, a valid basis to raise the parent's treaty rights, at least with respect to certain employees. Kirmse v. Hotel Nikko of San Francisco*, 51 Cal.App.4th 311, 321 (1996).

On Petitioner's cross-appeal, the California Court of Appeal found that Petitioner failed to meet its burden of establishing third-party standing or piercing of the corporate veil. (Petitioner's Appendix, pages 24-25). Moreover, because corporations are legal entities, created under the laws of the states in which they are incorporated, such a determination is by necessity an application of state law because a corporation exists under authority granted by state law. Under the California Constitution, California law governs the alteration of or ability to repeal any laws regarding California corporations ("All laws now in force in this State concerning corporations and all laws that may be hereafter passed pursuant to this section may be altered from time to time or repealed"). *California Constitution*, Article XX, section 5. In California, absent controlling federal law, "state law governs the rights and responsibilities between a parent corporation and the subsidiaries." *Smith v. Tele-Communication, Inc.*, 134 Cal.App.3d 338, 343 (1982). See also, *In re Bob Richards Chrysler-Plymouth Corp.*, 473 F.2d 262, 265 (9th Cir. 1973) cert. denied, sub nom.; *Jump v. Manchester Life & Cas. Management Corp.*, 579 F.2d 449, 452 (8th Cir. 1978); and *Western Dealer Management, Inc. v. England*, 412 U.S. 919 (1973). Thus, the California Court of Appeal made a finding of fact and applied state law principles in reaching its determination that REI failed to establish third-party standing or pierce the corporate veil. Because this was a determination made under state law, and not a determination made

under the U.S. Japan FCN Treaty, the United States Supreme Court lacks jurisdiction to hear this case.

Even if this Court were to find that an American subsidiary of a twice-removed Japanese corporation has the right to assert third-party standing under the U.S. Japan FCN Treaty, the California Court of Appeal has already determined that REI had such a right, but failed to meet its burden, thereby rendering any decision by this Court an advisory opinion. Because any decision by this Court would constitute an advisory opinion, this Court lacks jurisdiction to hear this case.

B. This case is not ripe for review because a final finding of fact has not yet been made.

Petitioner argues that it has third-party standing sufficient to assert the rights of Ricoh Japan under Article VIII(1) of the U.S. Japan FCN Treaty. However, whether or not REI has third-party standing is a question of fact, and because the case will be retried, such a finding of fact has not yet been made. Therefore, this case is not ripe for review.

C. This case does not warrant review because there is no split between the Federal Circuits, and the California Court of Appeal's holding is not inconsistent with this Court's previous holdings.

Sumitomo Shoji America, Inc. v. Avagliano clearly established that an American corporation

which is a subsidiary of a Japanese corporation is an "American corporation" and therefore unable to directly invoke the rights provided to Japanese corporations under the U.S. Japan FCN Treaty. *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 189-190 (1982). However, in footnote 19, the Court declined to make any holding on whether an American subsidiary may assert the rights of the Japanese corporation. *Id.*

Petitioner cites to cases from the Third, Fifth, and Seventh Circuit Courts of Appeal which have subsequently addressed footnote 19, and have held that an American subsidiary of a Japanese corporation may assert the rights of the Japanese corporation and invoke the rights of the U.S. Japan FCN Treaty. Notably, there is no split between these or any other circuits.

Petitioner takes issue with the California Court of Appeal case of *Kirmse v. Hotel Nikko of San Francisco* which requires an American subsidiary to first make a showing that it has standing to assert third party rights *Kirmse v. Hotel Nikko of San Francisco*, 51 Cal.App.4th 311, 321 (1996). This holding is not inconsistent with the federal circuits, nor to the holding in *Sumitomo Shoji America, Inc. v. Avagliano*. Therefore, the instant case does not warrant review by the United States Supreme Court.

D. This case is different from *Sumitomo* and subsequent Federal Circuit cases because Petitioner is a subsidiary of an American corporation.

Petitioner attempts to argue that the ruling in this case is contrary to the holding of this Court and Federal Circuit Court cases that deal with the U.S. Japan FCN Treaty. However, in this case, Petitioner REI is an American subsidiary of another American corporation. None of the other Circuit Court's decisions deal with a subsidiary of an American corporation. In the cases of *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982), *Fortino v. Quasar Corp.*, 950 F.2d 389 (7th Cir. 1991), *Papaila v. Uniden America Corp.*, 51 F.3d 54 (5th Cir. 1995), and *Wallace v, SMC Pneumatics, Ins.*, 103 F.3d 1394 (7th Cir. 1997), the subsidiary corporation was a direct subsidiary of the Japanese parent corporation. In the case of *Bennett v. Total Minatome Corp.*, 138 F.3d 1053 (5th Cir. 1998), the Court dealt with a different treaty with similar application, and again, the corporation was a direct subsidiary of the foreign parent corporation. None of these cases address the issue of an American subsidiary of an American subsidiary of a Japanese corporation. Therefore, because the instant case is not in conflict with any Federal Circuit or Supreme Court case, the Petition should be denied.

E. The Petitioner's right to assert the right of its domestic parent's foreign parent is not a matter of national importance.

Entered into in 1953, the U.S. Japan FCN Treaty was one of several bilateral treaties negotiated after World War II to provide rules to protect the trade and business interests of one country in the other country. Keith Sealing, *The Current Legal Framework of Sex/Gender Discrimination Law: Sex, Allies and Bfoqs: The Case for not Allowing Foreign Corporations to Violate Title VII in the United States*, 55 Me. L. Rev. 90, 91 (2005). The treaties have a primarily commercial focus, and in the words of the United States negotiator:

> *[t]hey define the treatment each country owes the nationals of the other; their rights to engage in business and other activities within the boundaries of the former; and the respect due them, their property and their enterprise. Kirmse v. Hotel Nikko of San Francisco*, 51 Cal.App.4th 311, 321 (1996), citing to Walker, *Modern Treatise of Friendship, Commerce, and Navigation*, 42 Minn. L. Rev. 805, 806 (1958).

The U.S. Japan FCN Treaty assures that corporations of either country can engage in commerce and be subject to the laws of the other party on an equal basis as the other party's own companies. *Kirmse v. Hotel Nikko of San Francisco*, 51 Cal.App.4th 311, 319 (1996).

The treaty has served its purpose as is evident by the fact that Ricoh Japan, like many other Japanese corporations, has flourished in the United States. Nowhere is this more evident than the fact that Ricoh Japan has an American subsidiary, Ricoh New Jersey, which has its own subsidiary, Petitioner REI. Both Ricoh New Jersey and REI are protected by the laws of the United States and their respective states of incorporation, just like any other American corporation. While there is a logic in providing reciprocal protections to foreign companies, there is no reason why the domestic subsidiaries of these foreign companies should enjoy a greater status under the law than any other domestic corporation.

Moreover, neither REI, Ricoh New Jersey, nor Ricoh Japan have been able to establish how they will suffer "imminent and irreparable injury" if REI is not allowed to assert the rights of its parent's parent, Ricoh Japan. Instead, a more plausible explanation is that REI is seeking to circumvent the anti-discrimination provisions of California's Fair Employment and Housing Act, provisions which closely mirror the federal anti-discrimination statutes, by attempting to invoke the U.S. Japan FCN Treaty.

F. This Court denied Petitioner's previous Petition for a Writ of Certiorari on this same issue.

On or about February 24, 2005, Petitioner filed with this Court a Petition for Writ of Certiorari on these same issues. At that time, Petitioner was

appealing the trial court's ruling on Petitioner's Motion for Summary Judgment, in which the trial court refused to grant Petitioner's Motion for Summary Judgment on all claims on the basis of the U.S. Japan FCN Treaty. This Court denied the Petition, and should do so again.

G. Even if Petitioner were found to have third-party standing to assert the rights of Ricoh Japan, the U.S. Japan FCN Treaty is not a defense to Respondents' claims, and the case will continue.

At most, the U.S. Japan FCN Treaty allows the foreign corporation to discriminate on the basis of national citizenship. It does not allow the foreign corporation or domestic subsidiary to discriminate on the basis of race or national origin, nor does it allow the foreign corporation or domestic subsidiary to retaliate against an employee who makes a complaint of discrimination, nor does it allow the foreign corporation or domestic subsidiary to engage in the intentional infliction of emotional distress. These aforementioned claims are all claims which survived Petitioner's Motion for Summary Judgment, and are all claims which will be retried. Therefore, even if this Court were to find that Petitioner has established third-party standing to assert the rights of Ricoh Japan under the U.S. Japan FCN Treaty, the treaty is not a complete defense, and this case must still proceed.

CONCLUSION

For all the reasons stated herein, Respondents respectfully request that this Court deny Petitioner's Petition for Writ of Certiorari.

Dated: March 11, 2008

Respectfully submitted,

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